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Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Inter-carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68

Dear Ms. Salas:

On behalf of Focal Communications Corporation, I am writing to address an issue that may become part of the Commission's forthcoming order in this docket. It is our understanding that the Commission is considering a proposal in which it would exercise authority over dial-up ISP-bound traffic pursuant to Section 251(g) of the Telecom Act. Under this proposal, the Commission would say that ISP-bound traffic is "information access" and that the Commission retains authority over information access pursuant to Section 251(g). Further, because information access would be considered a separate category of traffic apart from telephone exchange service and exchange access, certain obligations of Section 251, including the establishment of reciprocal compensation arrangements under Section 251(b)(5), would not apply.

The Commission should immediately reject this proposal because the Commission has already established that "information access" is not a separate category of telecommunications traffic apart from telephone exchange service or exchange access. In the *Advanced Services Remand Order*, the Commission stated that "we decline to find that information access services are a separate category of services, distinct from, and mutually exclusive with, telephone exchange services or exchange access services."<sup>1</sup>

This ruling was prompted by petitions filed by four Bell Operating Companies seeking forbearance from the obligations of Section 251(c) as they applied to advanced services such as DSL-based services.<sup>2</sup> The Commission denied the petitions and ruled initially that advanced

<sup>1</sup> *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Remand, 15 FCC Rcd. 385, CC Docket No. 98-147 et al. (Dec. 23, 1999) at para. 46 ("Advanced Services Remand Order").

<sup>2</sup> Public Notice, Comments Requested in Connection with Court Remand of August 1998 Advanced Services Order, DA 99-1853 (Sep. 9, 1999).

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services were “either telephone exchange service or exchange access.”<sup>3</sup> On appeal to the United States Court of Appeals, U S WEST argued that the Commission erred because advanced services are neither exchange access nor telephone exchange service. In US WEST’s view, services provided to Internet service providers were “information access” services under the Act.<sup>4</sup> If “information access” were recognized as a separate category of telecommunications, DSL-based services would be exempt from Section 251(c) because that section applies only to exchange access and telephone exchange service. The Commission’s request for remand of the Advanced Services Order was granted, and the Commission considered anew US WEST’s argument.

The proceeding on remand established that if advanced services were exempt from Section 251(c), BOCs would not be required to interconnect under the terms of Section 251(c) with competitive DSL providers, BOCs would not be required to make DSL-based services available for resale, and BOCs would not be required to permit collocation of other carriers’ advanced services equipment such as Digital Subscriber Line Access Multiplexers (“DSLAMs”). The Commission correctly rejected the argument that the local service provided to ISPs was information access.

The Commission noted that Congress did not create a definition for “information access” in the Telecom Act when it defined “telephone exchange service” and “exchange access.” According to the Commission, information access in Section 251(g) “is a transitional enforcement mechanism that obligates the incumbent LECs to continue to abide by equal access and nondiscriminatory interconnection requirements of the [Modified Final Judgment in the AT&T antitrust proceeding.]”<sup>5</sup> The term information access is referenced in the Act “only for the purposes of transitioning from the MFJ.”<sup>6</sup> As the Commission stated to the United States Court of Appeals for the District of Columbia Circuit, references in the Act to information access “were designed simply to establish a transition from the MFJ’s equal access and nondiscrimination provisions (which used that term) to the new obligations set out in the statute.”<sup>7</sup>

Further, the MFJ itself recognized information access as a subcategory of other telecommunications services. In the *Advanced Services Remand Order*, the Commission stated as follows:

In addition to our disagreement with US WEST as to the significance of the MFJ terminology, we question US WEST’s underlying premise that the MFJ court considered “information access” to be a category separate and distinct from telephone exchange

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<sup>3</sup> *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd. 24011, CC Docket No. 98-147 et al. (Aug. 7, 1999) at para. 40.

<sup>4</sup> See Brief of Petitioner (US WEST), *US WEST Communications, Inc. v. FCC*, Docket No. 98-1410 (D.C.Cir.) at 28-30.

<sup>5</sup> *Advanced Services Remand Order* at para. 47.

<sup>6</sup> *Id.*

<sup>7</sup> Brief of Federal Communications Commission, *WorldCom, Inc. v. FCC*, No. 00-1002 et al. (D.C. Cir.) at 50.

services and exchange access. In that regard, we note that the MFJ itself defined information access as “the provision of specialized exchange telecommunications services by a BOC in an exchange area...,” thus indicating that information access was but a subcategory of a broader category of services.<sup>8</sup>

In other words, as a “specialized” form of “exchange telecommunications services by a BOC in an exchange area,” information access in the MFJ was a discrete segment of telecommunications within local telephone exchange services.<sup>9</sup>

An example of services that were considered to be “information access” in the MFJ would be “specialized local trunking” for information services reached by dialing a 976 number.<sup>10</sup> Further,

information access could include nondiscriminatory announcements to [BOC] customers of the recordings provided by various programmers making use of the 976 service. Any information access must be arranged so that multiple vendors could be provided nondiscriminatory access to the local networking portion of the 976 offering.<sup>11</sup>

It is clear that “information access” had a particular meaning in the MFJ that is not applicable in this context, but is merely a subcategory of telephone exchange service provided by incumbent local exchange carriers. Furthermore, the language of the MFJ with respect to “information access” makes it clear that “information access” fell within the telephone exchange service category and not the exchange access category. As noted, the MFJ defined “information access” as the “provision of specialized exchange telecommunications services by a BOC in an exchange area.” (emphasis added) By contrast “exchange access” is limited to functions or services performed by the BOC in connection with the origination or termination of interexchange telecommunications services.<sup>12</sup> “Telecommunications” means “the transmission between . . . points specified by the user, of the information of the user’s choosing, without change in the form or content of the information as sent and received.”<sup>13</sup> Thus, the structure of the MFJ confirms that “information access” is a subset of telephone exchange service and not of exchange access service.

If the Commission were to now conclude incorrectly that “information access” was a separate category apart from telephone exchange service or exchange access, the Commission would be in a position of agreeing with US WEST (subsequently acquired by Qwest Communications International, Inc.) and having to substantially alter the conclusions reached in the *Advanced Services Remand Order*. If ISP-bound traffic were considered information access,

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<sup>8</sup> *Advanced Services Remand Order* at n.99.

<sup>9</sup> See Comments of MCI WorldCom, Inc., *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147 et al.. (Sep. 24, 1999) at 15.

<sup>10</sup> See Response of the United States to Public Comments on Proposed Modification of Final Judgment at 53, *United States v. Western Electric Co.*, No. 82-0192 (D.D.C. May 20, 1982).

<sup>11</sup> *Id.* at 54.

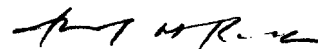
<sup>12</sup> *U.S. v. AT&T*, 552 F. Supp 131, 228 (1982).

<sup>13</sup> *Id.* at 229.

the obligations imposed on ILECs under Section 251(c) may not apply to DSL-based advanced services.

Because information access is not a separate category of telecommunications services provided by local exchange carriers, the Commission should not attempt to regulate ISP-bound traffic as information access service under Section 251(g). As the CLEC community has repeatedly argued, ISP-bound traffic is subject to the requirements of Section 251(b) and (c), including the requirement that carriers establish reciprocal compensation arrangements for the transport and termination of telecommunications under Section 251(b)(5).<sup>14</sup>

Sincerely,



Richard M. Rindler

cc: D. Attwood  
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<sup>14</sup> See, e.g., ex parte letter dated March 16, 2001 from John D. Windhausen, Jr. (ALTS) and H. Russell Frisby, Jr. (CompTel); ex parte letter dated November 30, 2000 from Kelley, Drye & Warren on behalf of Intermedia, Time Warner Telecom, Focal, KMC, and e.spire;